



U.S. Citizenship
and Immigration
Services

141



FILE:



Office: PHOENIX, ARIZONA

Date:

IN RE:

Applicant:



AUG 09 2008

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the Acting District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on or about February 7, 1985. On May 29, 1985, the applicant was deported from the United States pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act). The record reflects that the applicant reentered the United States in June 1985 without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States and reside with his adult children.

The Acting District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Acting District Director's Decision* dated January 26, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception. -Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping

aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel states that Citizenship and Immigration Services (CIS) abused its discretion in denying the Form I-212 application and failed to consider all the favorable factors, which outweigh the applicant's deportation in 1985 and his criminal history. Additionally in the brief and in affidavits submitted previously it is stated that if the applicant were not permitted to reside in the United States his U.S. citizen daughter and grandchildren would suffer extreme hardship. Furthermore counsel states that CIS concentrated on the applicant's criminal record and did not take into consideration his medical condition. Counsel further asserts that the applicant's criminal offenses were dismissed and did not result in a conviction, and therefore do not denote poor moral character. Counsel submitted a letter from the Glendale Police Department indicating that records from 1983 to 1992 have been purged and are not longer available.

The AAO finds counsel's assertions not persuasive since the record of proceedings clearly reveals that the applicant has the following convictions:

March 14, 1983, domestic violence assault, August 12, 1987, driving under the influence, January 8, 1990, driving under the influence, August 17, 1989, assault, July 5, 1990, assault, December 27, 1991, obstruction with judicial proceedings, and November 23, 1992, assault. In addition the applicant has numerous other arrests that did not result in a conviction.

Unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied.

On appeal, counsel states that the applicant's children and grandchildren would suffer extreme hardship if the waiver application were denied. In addition counsel states that the applicant receives medication for seizures as a result of a head injury and that if he were removed to Mexico he would not be able to purchase his medication or receive proper medical attention for his medical condition. No evidence was provided to substantiate the claim that the medication the applicant receives for his seizures is unavailable in Mexico or that the applicant would not be able to receive proper medical treatment in Mexico. Affidavits provided from the applicant's children speak of the applicant's character and general hardship that would be imposed on them if he is not permitted to remain in the United States at this time.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis of removal; the recency of the removal; the length of legal residence in the U.S.; the applicant's moral character and his respect for law and order; evidence of reformation and rehabilitation; the existence of family responsibilities within the United States; any inadmissibility to the United States under other sections of the law; the hardship involved to the alien and others; and the need for the applicant's services in the United States.

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. *Lee* additionally held that,

[T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The AAO finds that the favorable factors in this case are the applicant's family ties to his U.S. citizen children and grandchildren, and the prospect of general hardship to the family.

The unfavorable factors in this matter include the applicant's illegal entry into the United States on or about February 7, 1985, his illegal re-entry subsequent to his removal, his employment without authorization, his lengthy presence in the United States without a lawful admission or parole, his criminal convictions and his continued disregard and abuse of the laws of this country. The Commissioner stated in *Matter of Lee, supra*, that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.